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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/634,384 08/09/00 BLOMQUIST

H TRW(VSSIM)47

EXAMINER

PM92/0208

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MILLER, E

ART UNIT

PAPER NUMBER

3641

DATE MAILED:

02/08/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

## Office Action Summary

Application No.

09/634,384

Applicant(s)

BLOMQUIST ET AL.

Examiner

Edward A. Miller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 1-21 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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1. The reply filed on February 6, 2001 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s):

In the reply, applicants elected claims 1-10 and 20 as the species. However, claims are not species. See MPEP 806.04(e), Claims Restricted to Species. [emphasis added.]

*"Claims are definitions of inventions. Claims are never species.* Claims may be restricted to a single disclosed embodiment (i.e., a single species, and thus be designated a specific species claim), or a claim may include two or more of the disclosed embodiments within the breadth and scope of definition (and thus be designated a generic or genus claim). Species are always the specifically different embodiments."

Election of a single species, as A or B, is required. As evidence that the species are separate, see Scherzinger, with metal powder agglomerates that have nothing to do with electro-explosion, and applicants' cited Wheatley which teaches electro-exploded powder with no disclosure therein that such powders are agglomerates. Applicants have failed to elect a species, and are required to complete this requirement. Applicant's traverse is not understood; the argument at page 2 (middle of the page) of the reply that the inventions (e.g. of claim 1 vs. claim 11) relate to each other as process and product is not cogent, as both are drawn to igniters, neither to process. Likewise as to the argument bridging pages 2 and 3 of the reply. Applicants further failed to recite the claims which read on the elected species, as required. Of course, if applicants admit on the record that there is no patentable difference between the two species, then the requirement would be withdrawn. However, the admission would be valid for all purposes, including under 35USC 103. The original requirement is incorporated herein by reference. Applicants are required to complete their response to the original requirement, as amplified herein.

2. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer,

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within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS  
OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

3. Any inquiry concerning either this or an earlier communication from the Examiner should be directed to Examiner Edward A. Miller at (703) 306-4163. Examiner Miller may normally be reached daily, except alternate Fridays, from about 9:30 AM to 7 PM.

If attempts to reach Examiner Miller by telephone are unsuccessful, his supervisor Mr. Carone can be reached at (703) 306-4198. The Group fax number is (703) 305-7687.

If there is no answer, or for any inquiry of a general nature or relating to the application status, please call the Group receptionist at (703) 308-1113.

Miller/em  
February 6, 2001



EDWARD A. MILLER  
PRIMARY EXAMINER